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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/803,835	03/12/2001	Martin Ryzl	16159.012001; P5534CNT	9990
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OSHA & MAY L.L.P./SUN 1221 MCKINNEY, SUITE 2800 HOUSTON, TX 77010				
EXAMINER GARCIA OTERO, EDUARDO				
ART UNIT			PAPER NUMBER	
2123				

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/803,835	RYZL, MARTIN	
	Examiner	Art Unit	
	Eduardo Garcia-Otero	2123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION: Final Action

Introduction

1. Title is: MODULE FOR DEVELOPING WIRELESS DEVICE APPLICATIONS USING AN INTEGRATED EMULATOR.
2. First named inventor is: RYZL.
3. Claims 1-15 are pending.
4. US Application was filed 3/12/04, and no earlier priority is claimed.
5. Applicant's Amendment was received 11/23/04.

Index of Important Prior Art

6. Kurple refers to US Patent 6,282,152.
7. Farris refers to US Patent 6,167,253.
8. Chen refers to US Patent 6,198,945.

Definitions

9. Microsoft Computer Dictionary, Fourth Edition, by Microsoft Press, JoAnne Woodcock as Senior Contributor, ISBN 0-7356-0615-3, May 1999, provides the following definitions:
 - **“Application”** is defined as “A program designed to assist in the performance of a specific task, such as word processing, accounting, or inventory management”.
 - **“Drop-down menu”** is defined as “A menu that drops from the menu bar when requested and remains open without further action until the user closes it or chooses a menu item. Compare pull-down menu”.
 - **“Emulate”** is defined as “For a hardware or software system to behave in the same manner as another hardware or software system. In a network, for example, microcomputers might emulate terminals in order to communicate with mainframes”.
 - **“Profile¹”** is defined as “See user profile”.
 - **“Profile²”** is defined as “To analyze a program to determine how much time is spent in different parts of the program during execution”.
 - **“User profile”** is defined as “A computer-based record maintained about an authorized user of a multiuser computer system. A user profile is needed for security and other

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reasons; it can contain such information as the person's access restrictions, mailbox location, type of terminal, and so on. See also user account".

- **"Virtual machine"** is defined as "Software that mimics the performance of a hardware device, such as a program that allows applications written for an Intel Processor to be run on a Motorola chip. Acronym: VM".

Applicant's Remarks

10. INVENTOR NAME. The Examiner has corrected the spelling of the first named inventor's name to properly read "Ryzl".
11. DRAWINGS. The Drawing replacement sheets are accepted without objection.
12. OBJECTION. The prior objection to the specification is withdrawn due to Applicant's amendment.
13. REJECTIONS UNDER 35 USC 112. The Examiner withdraws the prior rejections for indefiniteness due to Applicant's persuasive assertions.
14. REJECTIONS UNDER 35 USC 103. Applicant asserts that claim 1 has been amended to include the limitation "wherein the emulator executes the application", and asserts that the amended claim 1 is not disclosed by the prior art of record.
15. Applicant asserts (Remarks page 7) that Kurple fails to disclose emulating an entire wireless device. However, the claim 1 language does not require emulating an entire wireless device. Rather, the claim 1 terminology is quite broad, stating "facilitating development of an application for a wireless-connected device". Microsoft Computer Dictionary defines "application" as "A program designed to assist in the performance of a specific task, such as word processing, accounting, or inventory management". The Examiner interprets "application" broadly as including small applications such as the Kurple transmissions.
16. Additionally, Kurple disclose more than merely emulating transmissions. Note that the Abstract discloses multiple applications, including "displaying" time related information, and "decoding" encrypted signals. The portions of Kurple that were cited must be interpreted in the context of the entire publication.

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action: (a) A patent may not be obtained though the invention is not identically disclosed or

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described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

18. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
Determining the scope and contents of the prior art. Ascertaining the differences between the prior art and the claims at issue. Resolving the level of ordinary skill in the pertinent art. Considering objective evidence present in the application indicating obviousness or nonobviousness.
19. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable.
20. Claim 1 (amended) is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admission in view of Kurple US Patent 6,282,152.
21. Independent claim 1 is an "apparatus" claim with 2 limitations, numbered by the Examiner for clarity.
22. In claim 1 limitation [1], **"a module having a plurality of development tools for use in the creation of the application"** is disclosed by Applicant's Admission at FIG 5 which is labeled "(PRIOR ART)". Note the FIG 5 "INTEGRATED DEVELOPMENT ENVIRONMENT (IDE)" which contains "FORM EDITOR" and "FULL-FEATURED TEXT EDITOR" and "DEBUGGER" and "COMPILER". See discussion at Specification page 4 and 5.
23. Regarding admissions, MPEP § 2129 states "When applicant states that something is prior art, it is taken as being available as prior art against the claims". *In re Nomiya*, 509 F.2d 566, 184 USPQ 607, 611 (CCPA 1975) states "admissions...may be considered "prior art" for any purpose, including use as evidence of obviousness under § 103". *Constant v. Advanced Micro-Devices*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1063 (Fed. Cir. 1988), "[Applicant's] own admission during prosecution...is binding upon him". Additionally, U.S. Patent and Trademark Office (USPTO), Formulating and Communicating Rejections Under 35 U.S.C. 1037 (Feb. 13, 1991) states when relying on an admission as evidence of obviousness, moreover, it is unnecessary to cite a corroborating reference to support the admission. Also see 37 C.F.R. § 1.104(c)(3).
24. Applicant's Admission apparently does not expressly disclose the additional limitations.

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25. In claim 1 limitation [2], **“an emulator of the wireless-connected device integrated with the module, wherein the emulator executes the application”** is disclosed by Kurple at column 2 lines 52-54 “a universal, wireless controller, emulates transmissions of wireless transmitters to control features of a plurality of systems” and Kurple Abstract discloses multiple applications, including “displaying” time related information, and “decoding” encrypted signals.
26. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use Kurple to modify Applicant’s Admissions. One of ordinary skill in the art would have been motivated to do this in order to develop Java based virtual machines to function on multiple platforms and/or to emulate legacy systems.
27. In claim 2, **“the module is included in an Integrated Development Environment”** is disclosed by Applicant’s Admission at FIG 5 which is labeled “(PRIOR ART)”. Note the FIG 5 “INTEGRATED DEVELOPMENT ENVIRONMENT (IDE)” which contains “FORM EDITOR” and “FULL-FEATURED TEXT EDITOR” and “DEBUGGER” and “COMPILER”.
28. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use Kurple to modify Applicant’s Admissions. One of ordinary skill in the art would have been motivated to do this in order to develop Java based virtual machines to function on multiple platforms and/or to emulate legacy systems.
29. In claim 3, **“the module is accessible through a drop-down menu in the Integrated Development Environment”** is disclosed by Applicant’s Admission at FIG 5 which is labeled “(PRIOR ART)”. Note the FIG 5 “INTEGRATED DEVELOPMENT ENVIRONMENT (IDE)” which contains “FORM EDITOR” and “FULL-FEATURED TEXT EDITOR” and “DEBUGGER” and “COMPILER”. Note that the use of drop-down menus is a standard and ubiquitous method of accessing menus in graphical user interfaces for software such as editors.
30. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use Kurple to modify Applicant’s Admissions. One of ordinary skill in the art would have been motivated to do this in order to develop Java based virtual machines to function on multiple platforms and/or to emulate legacy systems.

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31. In claim 4, **“the emulator is designed to execute the application”** is disclosed by Kurple at column 2 lines 52-54 “a universal, wireless controller, emulates transmissions of wireless transmitters to control features of a plurality of systems”
32. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use Kurple to modify Applicant’s Admissions. One of ordinary skill in the art would have been motivated to do this in order to develop Java based virtual machines to function on multiple platforms and/or to emulate legacy systems.
33. In claim 5, **“an additional emulator for an additional wireless-connected device”** is disclosed by Kurple at column 2 lines 52-54 “a universal, wireless controller, emulates transmissions of wireless transmitters to control features of a plurality of systems”. Note *In re Harza* (legal precedent for duplication), 274 F.2d 669, 124 USPQ 378, 380 (CCPA 1960) which states “It is well settled that the mere duplication of parts has no patentable significance unless a new and unexpected result is produced”. See MPEP 2144.04(VI)(B). In claim 5, there is no new or unexpected result from the additional emulator.
34. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use Kurple to modify Applicant’s Admissions. One of ordinary skill in the art would have been motivated to do this in order to develop Java based virtual machines to function on multiple platforms and/or to emulate legacy systems.
35. In claim 6, **“the module is designed to allow creation and packaging of the application with a plurality of profiles without modification of the module”** is disclosed by Kurple at column 2 lines 52-54 “a universal, wireless controller, emulates transmissions of wireless transmitters to control features of a plurality of systems”. Note that MS Dictionary defines “User profile” as “A computer-based record maintained about an authorized user of a multiuser computer system. A user profile is needed for security and other reasons; it can contain such information as the person’s access restrictions, mailbox location, type of terminal, and so on. See also user account”. Thus, the Kurple term “control features of a plurality of systems” discloses the claim 6 term “plurality of profiles”
36. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use Kurple to modify Applicant’s Admissions. One of ordinary skill in the art

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would have been motivated to do this in order to develop Java based virtual machines to function on multiple platforms and/or to emulate legacy systems.

37. Claims 7-15 have the same limitations, and are rejected for the same reasons as “apparatus” claims 1-6 above.

Conclusion

38. All pending claims stand rejected.

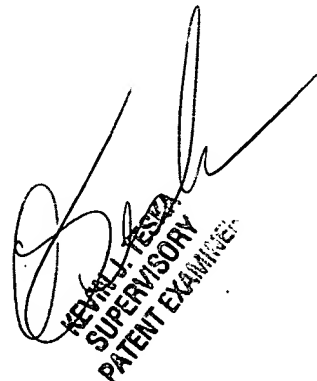
Response to Amendments-FINAL OFFICE ACTION

39. Applicant's amendments necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Communication

40. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eduardo Garcia-Otero whose telephone number is 571-272-3711. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 8:00 PM. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Kevin Teska, can be reached at 571-272-3761. The fax phone number for this group is 703-872-9306.

* * * *



KEVIN TESKA
SUPERVISORY
PATENT EXAMINER